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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,387	02/27/2002	Hideaki Sakai	219028US0CONT	5716

22850 7590 01/30/2004

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/083,387

Applicant(s)

SAKAI ET AL.

Examiner

Lien T Tran

Art Unit

1761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1, 3-20 and 22.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
LIEN TRAN  
PRIMARY EXAMINER  
Group 1700

Continuation of 5. does NOT place the application in condition for allowance because: the argument is not persuasive for reason of record. For clarification, the Gotoh et al reference is not used as the primary reference. The rejection is based on Greene et al in view of Gotoh et al. In the response, applicant also submits a declaration to show unexpected result. The declaration is not found to be persuasive. The declaration states "noodles were produced by optimizing the general method of Greene". However, the noodle tested is a noodle obtained from "Nishiyama Seimen Corp"; it is not known how this noodle is made and it is certainly not stated in the declaration that the noodle is made by a process as set forth on column 2 lines 28 through line 20 of column 3 of the Greene et al reference. The steaming time is outside of the range taught by Greene et al and it is not known the state of the noodle at the time of the steaming. The declaration does not state if the noodle is obtained is a raw noodle or what. It is not known if the noodle tested is the same type of noodle claimed. The testing parameters are subjective measurements and it is not known how these parameters are tested. How many samples are tested to produce a statistically significant data. Who evaluates the testing parameters. What might be detectable very flour flavor to one might not be so to other and what would be considered as very flour flavor. There is no objective measurement. There is no explanation of how the testing parameters are measured or tested. For example, how are the sogginess, smoothness and elasticity measured. Is there a significant difference between smooth surface noodle and rather smooth surface noodle and how is such difference measured. Furthermore, the declaration does not address the rejection. The rejection sets forth that it would have been obvious to fry the noodle as set forth by Greene et al in the oil disclosed by Gotoh et al to obtain the benefits taught by Gotoh et al. The oil of Gotoh et al as set forth in claim 1 of the patent contains 40-90% by weight diglyceride. This amount of diglyceride is within the ranges claimed.